

CHAPTER 3

ACCESS TO INFORMATION

- I. CATEGORIES OF INFORMATION ..... 1
  - A. Public Information ..... 1
  - B. Business Proprietary Information ..... 2
  - C. Privileged Information ..... 2
  - D. Classified Information ..... 3
- II. PLACEMENT OF INFORMATION ON THE RECORD ..... 3
- III. TREATMENT OF BUSINESS PROPRIETARY INFORMATION ..... 4
  - A. Establishing Business Proprietary treatment of Information ..... 4
  - B. Identification of Business Proprietary Information ..... 4
  - C. DOC Procedures for Working with Business Proprietary Information ..... 5
- IV. PUBLIC VERSIONS OF DOCUMENTS AND PUBLIC SUMMARIES OF BUSINESS PROPRIETARY INFORMATION ..... 7
- V. NONCONFORMING SUBMISSIONS ..... 8
- VI. SUPPLEMENTAL INFORMATION ..... 9
- VII. ACCESS TO BUSINESS PROPRIETARY INFORMATION UNDER ADMINISTRATIVE PROTECTIVE ORDER ("APO") ..... 9
  - A. The New APO ..... 11
  - B. APO Requirements ..... 11
  - C. Approval of the APO Application and the APO Service List ..... 12
- VIII. USE OF BUSINESS PROPRIETARY INFORMATION ..... 13
  - A. Use of Business Proprietary information by the Secretary ..... 13
  - B. Use of Business Proprietary Information by the Parties ..... 14
  - C. Identifying Parties' Business Proprietary Information ..... 15

ACCESS TO INFORMATION

D. Disclosures to Parties Not Authorized to Receive Business Proprietary Information ..... 16

IX. NOTIFICATION OF DESTRUCTION OF BUSINESS PROPRIETARY INFORMATION ..... 16

X. DOC PROCESSING PROCEDURES ..... 16

    A. Placement on the APO Service List ..... 16

    B. Claims for “Clear and Compelling Need to Withhold” ..... 17

    C. Release of APO Materials ..... 18

XI. APO SANCTIONS FOR VIOLATIONS OF APOs ..... 19

XII. APO CHECK LIST ..... 21

ATTACHMENTS

- 1 INTERPRETERS AGREEMENT
- 2 CERTIFICATION OF COMPLIANCE WITH APO

LIST OF ACRONYMS & ABBREVIATIONS

AD	ANTIDUMPING
APO	ADMINISTRATIVE PROTECTIVE ORDER
CFR	CODE OF FEDERAL REGULATIONS
CIT	COURT OF INTERNATIONAL TRADE
CVD	COUNTERVAILING DUTY
DOC	DEPARTMENT OF COMMERCE
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
JPO	JUDICIAL PROTECTIVE ORDER
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED
THE SECRETARY	THE SECRETARY OF COMMERCE
TRO	TEMPORARY RESTRAINING ORDER
URAA	URUGUAY ROUND AGREEMENTS ACT

CHAPTER 3

ACCESS TO INFORMATION

References:

The Tariff Act of 1930, as amended (the Act)

Section 777 - access to information

The Customs and Trade Act of 1990

Section 135(b) - prohibition on release of customer names

Department of Commerce (DOC) Regulations

19 CFR 351.105 - categories of information

19 CFR 351.303 - filing requirements

19 CFR 351.304(b) - identification of business **proprietary information**

19 CFR 351.304(c) - public versions of business proprietary information

19 CFR 351.304(d) - nonconforming submissions

SAA

Section A.4 - procedural rules for proceedings

Section C.4.a.(4) - public and proprietary records

Antidumping Agreement

Article 6.1.2 - availability of information

Article 6.1.3 - protection of confidential information

Articles 6.2 - 6.5.2 - confidentiality and public summaries of information

**I. CATEGORIES OF INFORMATION**

Section 351.105 of the DOC's regulations sets forth the categories of information in an antidumping (AD) or countervailing duty (CVD) proceeding: public, business proprietary, privileged, and classified.

**A. Public Information**

All information submitted by parties in an AD or CVD proceeding is treated as publicly available information unless it is accompanied by a request for business **proprietary treatment**. The types of information which are normally regarded as public information are set forth in paragraph (b) of section 351.105. This paragraph describes public

### ACCESS TO INFORMATION

information as 1) factual information of a type that has been published or otherwise made available to the public by the person submitting it such as in advertisements, product brochures or marketing displays, 2) factual information that is not designated as business proprietary by the person submitting it, 3) factual information which, although designated as business proprietary by the person submitting it, is in a form which cannot be associated with or otherwise used to identify activities of a particular person, or which the Secretary determines is not properly designated as business proprietary, 4) publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations, and 5) written argument relating to the proceeding that is not designated as business proprietary.

#### **B. Business Proprietary Information**

The description of business proprietary information is addressed in paragraph (c) of section 351.105 of the DOC's regulations. The regulation states that the following factual information will generally be regarded as business proprietary information, if it is so designated by the submitter: (1) business or trade secrets, (2) production costs, (3) distribution costs, (4) terms of sale, (5) prices of individual sales, likely sales, or other offers, (6) names of particular customers, distributors, or suppliers, (7) in a AD proceeding, the exact amount of the **dumping** margin on individual sales; (8) in a CVD proceeding, the exact amount of the benefit applied for or received by a person from each of the programs under investigation or review, (9) the names of particular persons from whom business proprietary information was obtained, (10) the position of a domestic producer or workers regarding a petition, and (11) any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

#### **C. Privileged Information**

The description of what the DOC considers to be privileged information for the purpose of an AD or CVD proceeding is set forth in 19 CFR 351.105(d). This section explains that the DOC will consider information privileged if, based on principles of law concerning privileged information, it decides that the information should not be released to the public or to parties to the proceeding. Only the U.S. Government can assert

## ACCESS TO INFORMATION

privilege. Generally, an example of a type of information that would be considered privileged is the name of an informer in a fraud investigation. Privileged information is exempt from disclosure to the public or to representatives of interested parties, even under the terms of an **administrative protective order** (APO). Privileged information, however, is put on the record in a privileged index, and released to parties under judicial protective order (JPO) unless the court agrees not to release it. Privilege also applies to attorney-client privilege or pre-decisional material.

### **D. Classified Information**

Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982, or successor executive order, if applicable. An example of this type of information is national security information. Classified information is exempt from disclosure to the public or to representatives of interested parties under the terms of an APO. Generally, this type of information would not be presented to the DOC in the context of an AD or CVD proceeding.

## **II. PLACEMENT OF INFORMATION ON THE RECORD**

Business proprietary, and public information is placed in the official record file and the working file for an investigation or **administrative review** (see Chapter 2 for more information about the administrative record). Privileged or classified information is placed on separate official records. Only public information is placed in the public files. All documents prepared internally, which contain business proprietary information, are to be placed only in official and working files. Public versions of business proprietary documents must be prepared for the public file with the proprietary data deleted. It is our general practice to provide respondent's counsel with advance copies of **verification** reports, and other sensitive case documents, in order to confirm the bracketing of business proprietary information prior to the release of the document under APO and prior to the creation of the public version for inclusion in the public file. These are not draft documents. Privileged, pre-decisional memoranda are not placed in the public files.

ACCESS TO INFORMATION**III. TREATMENT OF BUSINESS PROPRIETARY INFORMATION****A. Establishing Business Proprietary treatment of Information**

Section 351.304 sets forth rules concerning the treatment of business proprietary information in general. Paragraph (a) is a general provision. Paragraph (a)(1) provides persons with the right to request (i) that certain information be considered business proprietary, and (ii) that certain business proprietary information be exempt from disclosure under APO. Consistent with section 777(c)(1)(A) of the Tariff Act of 1930 (the Act), paragraph (a)(2) provides that, as a general matter, the DOC will require that all business proprietary information be disclosed to authorized applicants, with the exception of (i) customer names in an investigation; (ii) information for which the DOC finds there is a clear and compelling need to withhold from disclosure; and (iii) classified or privileged information.

All business proprietary information must be stored in file cabinets, desk drawers or boxes to the extent possible. When business proprietary data is left in offices which are not occupied by an analyst at the time, the office door should be locked.

**B. Identification of Business Proprietary Information**

The identification of business proprietary information in submissions to the DOC is addressed in 19 CFR 351.304(b). 19 CFR 351.304(b)(1) deals with the bracketing and labeling of business proprietary information in general, and is consistent with the DOC's past practice that requires that a person claiming business proprietary status for information place single brackets ("[ ]") around the information. This paragraph also requires that a person claiming business proprietary status for information must explain why the information in question is entitled to that status. The paragraph further explains that the submitting person must include an agreement to permit disclosure under APO, unless the submitter claims that there is a clear and compelling need to withhold the information from disclosure under APO. A new provision, under paragraph (b)(2), provides for the double bracketing ("[[ ]") of business proprietary information for which the submitting party claims a clear and compelling need to withhold from disclosure under APO; and customer names submitted in an investigation. For a discussion of

### ACCESS TO INFORMATION

claims for clear and compelling need to withhold, see item B below.

Section 135(b) of the Customs and Trade Act of 1990 ("The 1990 Mini Trade Bill") specifically amended Section 777 of the Act to prohibit the release of customer names by the DOC during any investigation which requires a determination under section 705(b) or 735(b) until either an order is published under section 706(a) or 736(a) as a result of the investigation or the investigation is suspended or terminated (in other words, this prohibition does not apply in administrative reviews or in any other segment of a proceeding than the investigation). The specific language reads as follows: "Customer names obtained during any investigation which requires a determination under section 705(b) or 735(b) may not be disclosed by the administering authority under protective order until either an order is published under section 706(a) or 736(a) as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names under protective order during any such investigation until a reasonable time prior to any hearing provided under section 774."

This means that the DOC may not release business proprietary customer names during an investigation - not orally, not in verification reports, and not in any other document it generates. Analysts must be aware that, when we give a party the opportunity to confirm our bracketing in verification reports and other documents in the investigation "segment" of the proceeding, the party may not double bracket customer names and assume the analyst will delete the customer names in an APO version of the document. In order to prevent improper handling of customer names during an investigation, analysts may choose to avoid the use of customer names if at all possible. Most importantly, analysts must bracket business proprietary information as they work in order to assure the accurate and proper treatment of all business proprietary information.

#### **C. DOC Procedures for Working with Business Proprietary Information**

1. When referring to proprietary information in writing, BRACKET ALL proprietary information (text, charts, etc.) as you work. Do not wait until the document is in final form. If unsure of the proprietary nature of certain information, [bracket it] and then refer to the source document to confirm its proprietary nature or discuss its status with the submitter of the information.
2. Mark all internally generated documents containing proprietary information with

ACCESS TO INFORMATION

the notation “Business Proprietary”. This notation should be on the cover page and any pages on which proprietary information appears. (Working notes, charts or drafts of documents should also be properly marked. Obsolete drafts should be quickly destroyed. “Business Proprietary”- stamps can be used to reduce the time needed to mark each page.

3. Mark all public versions of internally generated documents from which all proprietary information has been deleted with the notation “Public Version”. The public version of a proprietary document, with the exception of the [bracketed] proprietary information that has been deleted, should be exactly the same as the business proprietary version.
4. Mark all APO versions of business proprietary documents with the notation “Business Proprietary - APO Version”. The APO version of a proprietary document should be identical to the proprietary document, with certain limited exceptions. The limited exceptions may include customer names or identifiers in an investigation only and certain information for which it has been determined that there is a clear and compelling need to withhold from disclosure under APO. This type of information might include sources of information, and trade secret information. Note the different treatment of [[customer]] names/identifiers in investigations and other proceeding segments.
5. Never divulge proprietary information, either orally or in written form, to anyone not authorized to have access to the information. (Always assume that someone is authorized to have access unless you know that the individual is a Department colleague officially working on the case, the submitter of the information, or is specifically authorized by the Department’s APO for that segment of the proceeding.)
6. Never use proprietary information for any purpose other than for the purpose of the specific segment of the proceeding in which it was obtained or in which it is authorized for use.

### ACCESS TO INFORMATION

7. All business proprietary information must be stored in file cabinets, desk drawers or boxes to the extent possible. When business proprietary data is left in offices which are not occupied by an analyst at the time, the office door should be locked\*. Floppy disks containing proprietary data should not be left unattended in a word processor.

Note that there are security visits during office hours and not properly securing proprietary data is a security violation

8. In the event that a party is acting pro se be very aware of the information available to a party for whom you are preparing a party specific version of a proprietary document.
9. Avoid the use of proprietary data in footnotes. Proprietary information in footnotes may often be overlooked when preparing the public and APO versions of a proprietary document.
10. Do not summarize proprietary information in a public document. This includes paraphrasing or discussing in general terms a party's proprietary information.

#### **IV. PUBLIC VERSIONS OF DOCUMENTS AND PUBLIC SUMMARIES OF BUSINESS PROPRIETARY INFORMATION**

19 CFR 351.304(c) deals with the public version of a business proprietary submission. Paragraph (c)(1) requires a party to file the final business proprietary version of the document containing business proprietary information one business day after the due date of the business proprietary version of the document. This practice is known as the "one day lag" rule. The submission of the final business proprietary version of the entire document must be accompanied by the public version of the document. Specific filing requirements are contained in 19 CFR 351.303. The purpose of this requirement is to ensure that the DOC is reviewing the correct business proprietary version.

As noted above, public versions of documents containing public summaries or an explanation of why business proprietary information cannot be summarized are required

### ACCESS TO INFORMATION

to be filed one business day after the due date of the business proprietary version of the document with the final business proprietary version of the document. As explained below, failure to submit a proper public version of the business proprietary document will result in the rejection of the business proprietary document. The summaries must be sufficiently detailed to allow a reasonable understanding of the business proprietary information contained in the submission. 19 CFR 351.304(c)(1) permits a party to claim that summarization is not possible. However, the regulations also state that the DOC will vigorously enforce the requirement for public summaries, and will grant claims that summarization is impossible only in exceptional circumstances. Parties may only publicly summarize their own business proprietary information.

No party should publicly summarize another party's business proprietary information because it may lead to the improper disclosure of the information which would be a violation of the APO.

Public versions of business proprietary documents must include all text contained in the submission that has not been otherwise claimed as business proprietary. Parties may choose to either range or index numerical data. If parties choose to range numerical data, the data must be presented in terms of figures within 10 percent of the actual number. Where the number is so small that a range of 10 percent would be impractical, a range of 20 percent may be used upon receipt of approval from the DOC. Voluminous data, such as computer printouts, may be summarized by ranging at least one percent of the data included. Check with your supervisor or program manager (PM) if you receive a request for an exception to the 10-percent-ranging rule.

### **V. NONCONFORMING SUBMISSIONS**

19 CFR 351.304(d) deals with submissions that do not meet the requirements of section 777(b) of the Act or the DOC's regulations. This paragraph provides for the DOC's return of documents to the submitter if they do not conform. It also gives the submitter the opportunity to take any of the following actions within two business days after receiving the DOC's explanation for the return of the document: (1) correct the problems and resubmit the information; (2) agree to have the information in question treated as public information if the DOC denied a request for business proprietary treatment; (3) agree to the disclosure of the information under APO if the DOC granted business

### ACCESS TO INFORMATION

proprietary treatment but denied a claim that there was a clear and compelling need to withhold the information from APO release; or (4) submit other material concerning the subject matter of the returned information. If the submitting person does not take any of these actions, the DOC will not consider the returned submission.

19 CFR 351.304(d)(2) provides for the DOC to determine the status of information normally within 30 days after the day on which the information is submitted. The deadline is intended to avoid situations in which the DOC inadvertently accepts nonconforming submissions or only recognizes the problem too late to request replacements. Analysts should review documents as soon as possible after they are submitted, and should promptly address any complaint of an alleged nonconforming submission.

## **VI. SUPPLEMENTAL INFORMATION**

Supplemental information, such as a supplemental questionnaire response or an amendment to a petition, is treated in the same manner as an original submission. Supplemental information must be filed on a timely basis. All supplements to responses must be received in time to be reviewed prior to verification. If an attempt is made to submit a minor amount of additional information at verification, a copy of the data may be accepted for verification purposes, but the party must be advised to file the information officially with the DOC in Washington. Where verification uncovers errors which require overall correction of portions of a response, the corrections must also be filed officially. All information must be filed on the record with appropriate public summaries and APO release statements.

## **VII. ACCESS TO BUSINESS PROPRIETARY INFORMATION UNDER ADMINISTRATIVE PROTECTIVE ORDER ("APO")**

An APO is the legal mechanism by which the DOC controls the limited disclosure of business proprietary information to representatives of interested parties. The DOC authorizes the release of business proprietary information under APO when the representatives file an application for APO access (FORM ITA-367) in which they agree to be bound by the terms of the APO. Applicants must:

ACCESS TO INFORMATION

- o use the information only in the segment of the proceeding in which it was submitted or in which it is authorized for use,
- o protect the information from unauthorized disclosure,
- o report any violation of the terms of the APO, and
- o acknowledge the sanctions that may be imposed should there be a violation of the terms of the APO.

Recently, the DOC adopted two new terms that are contained in the APO itself and are defined in 19 CFR 351.102 of the regulations. The first term "applicant" is defined as an individual representative of an interested party that has applied for access to business proprietary information under an APO. The second term, "authorized applicant," is defined as an applicant that the Secretary of Commerce ("the Secretary") has authorized to receive business proprietary information under an APO; it is a term borrowed from the practice of the U.S. International Trade Commission ("ITC").

The term "representative" is also defined in the context of APO administration to refer to an individual, enterprise or entity acting on behalf of an interested party. The distinction is necessary because the term has broader application than in the context of APO administration.

19 CFR 351.305 deals with procedures for obtaining business proprietary information under APO. Paragraph (a) sets forth a new procedure based on the use of a single APO for each segment of a proceeding. It also establishes the requirements an authorized applicant must meet if they have APO access. Paragraph (b) establishes the APO application process. Paragraph (c) concerns approval of an APO application.

The DOC has centralized the APO function for IA under the Director for Antidumping and Countervailing Duty Policy and Analysis in the APO office. The APO office is responsible for directing IA's handling of business proprietary information, and provides guidance and instructions for protecting and working with business proprietary information. The APO office, staff is responsible for the entire APO process in all

### ACCESS TO INFORMATION

antidumping proceedings including protective orders for all Binational Panel Proceedings pursuant to the North American Free Trade Agreement. The APO office needs your assistance in performing its functions. See section X of this chapter for a complete description of the APO office internal processing procedures.

#### **A. The New APO**

19 CFR 351.305(a) sets forth a new APO procedure for the DOC. A single APO is placed on the record for each segment of an AD or CVD proceeding within two days after a petition is filed or an investigation is self-initiated, or five days after the initiation of any other segment. ("segment of the proceeding" is defined in section 19 CFR 351.102 as a portion of the proceeding that is reviewable under section 516A of the Act.) All authorized applicants are subject to the terms of this single APO.

#### **B. APO Requirements**

19 CFR 351.305(a) also sets forth the requirements that are included in the APO and to which all authorized applicants must adhere. The DOC has eliminated from the APO detailed internal procedures that firms were required to follow to protect APO information from unauthorized disclosure. In paragraph (a)(1), the DOC requires each applicant to establish its own internal procedures.

19 CFR 351.305(b) deals with the APO application process itself. Paragraph (b)(1) permits the use of two independent representatives, with one representative being designated as the lead representative. Generally, APO applicants are attorneys admitted to a U.S. bar or trade consultants. APO access is granted to non-legal representatives only if the applicants have a significant practice before the DOC. Paragraph (b)(2) provides procedures for applying for an APO and establishes a "short form" application that applicants can generate from their own word-processing equipment. An applicant must acknowledge that any discrepancies between the application and the DOC's APO placed on the record will be interpreted in a manner consistent with the DOC's APO. Paragraph (b)(2) also provides that an applicant must apply to receive all business proprietary information on the record of the particular segment of the proceeding in question. The purposes of this requirement are to eliminate the need for parties to

### ACCESS TO INFORMATION

prepare separate APO versions of submissions for each of the different parties involved in a proceeding and to reduce the number of APO violations that occur through the inadvertent service of a document containing business proprietary information to parties not authorized to receive it. In order to avoid forcing parties to receive a submission in which they have no interest, however, a party may waive service of business proprietary information it does not wish to have served on it by another party.

19 CFR 351.305(b)(3) establishes the deadline for applying for an APO, and is a significant change from past practice. Paragraph (b)(3) encourages parties to submit APO applications before the first questionnaire response is filed, but permits parties to submit applications up to the date on which case briefs are due. Under the deadline set forth in this section, the burden on parties required to serve APO information may increase. Parties are now provided with five days in which to serve APO information on late APO applicants. Additionally, late applicants are required to pay the costs associated with the additional production and service of business proprietary submissions that were served on other parties earlier in the segment of the proceeding. An APO application filed later in the course of a proceeding segment will not serve as the basis for extending any administrative deadline, such as a briefing or hearing schedule.

#### **C. Approval of the APO Application and the APO Service List**

19 CFR 351.305(c) deals with the approval of an APO application. The APO office will approve an application within five days of its receipt unless there is a question concerning the eligibility of an applicant to receive access under APO. In that case, the DOC will decide whether to grant the application within 30 days of receipt of the application.

When an application is approved, the name of the authorized applicant will be placed on an APO service list that the DOC maintains for each segment of a proceeding. Paragraph (c) provides that the DOC will use the most expeditious means available to provide parties with the APO service list on the day the list is issued or amended. The DOC will fax every change in the APO service list directly to each party on the APO service list and public service list for each proceeding. (The APO team will obtain

ACCESS TO INFORMATION

information concerning the public service list from the analysts assigned to the case.) APO service lists will also be available to the public on the ITA's home page of the Internet.

### **VIII. USE OF BUSINESS PROPRIETARY INFORMATION**

Rules concerning the use of business proprietary information are contained in 19 CFR 351.306. Paragraph (a) addresses the use of business proprietary information by the Secretary. Paragraph (b) concerns the use of business proprietary information from one segment of a proceeding in another. Paragraph (c) addresses the identification in submissions of business proprietary information from multiple persons. Paragraph (d) concerns disclosures to parties not authorized to receive business proprietary information.

#### **A. Use of Business Proprietary information by the Secretary**

The use of business proprietary information by the Secretary is addressed in 19 CFR 351.306(a). The Secretary may disclose business proprietary information only to

1. An authorized applicant,
2. An employee of the DOC or the ITC directly involved in the proceeding in which the information is submitted,
3. An employee of the Customs Service directly involved in conducting a fraud investigation relating to an AD or CVD duty proceeding,
4. The U.S. Trade Representative as provided by 19 U.S.C. § 3571(i),
5. Any person to whom the submitting person specifically authorizes disclosure in writing, and
6. A charged party or counsel for the charged party under 19 CFR part 354.

### ACCESS TO INFORMATION

The URAA amended section 777(b)(1)(A)(i) of the Act to clarify that the DOC may use business proprietary information for the duration of an entire proceeding (from initiation to **termination** or **revocation**) as opposed to merely the particular segment of a proceeding for which information was submitted.

The URAA identifies three specific instances in which the DOC would be expected to use information from different segments of proceedings or different proceedings as follows: (1) information from prior segments may be used in a sunset or changed circumstances review of the same proceeding (section 777(b)(1) of the Act); (2) business proprietary information from a sunset or changed circumstances review resulting in revocation may be used in an investigation on the same merchandise from the same country initiated within two years of revocation (section 777(b)(3) of the Act); and (3) information from a terminated investigation may be used in a new investigation on the **subject merchandise** from the same and another country within three months of termination of the prior investigation (sections 704 and 734 of the Act).

#### **B. Use of Business Proprietary Information by the Parties**

As stated above, section 777 of the Act permits the DOC to use business proprietary information for the duration of an entire proceeding, from initiation to termination or revocation. Although IA may have access to business proprietary information from another segment of the proceeding, IA may not base a decision on business proprietary information that is not on the record of the particular segment of the proceeding. 19 CFR 351.306(b) deals with the use of business proprietary information by parties from one segment of a proceeding to another. Generally, the APO authorizes parties to retain business proprietary information for two additional segments after the segment in which the business proprietary information was submitted (i.e., two subsequent consecutive administrative reviews, or in any other segment initiated during those two administrative reviews). An authorized applicant may place business proprietary information received in one segment of a proceeding on the record of additional segments as classified but only if the information is relevant to an issue in the subsequent segment. Once business proprietary information is placed on the record of a subsequent proceeding, it remains a permanent addition to the later record.

### ACCESS TO INFORMATION

In certain instances, the DOC retains the services of hearing reporters, product experts, or translators. The reporters and translators are retained under specific contractual agreements. Generally, the reporters record our public hearings and provide transcripts to the parties. On occasion, reporters are called upon to record “closed” portions of hearings where proprietary information may be discussed. Product experts are sometimes retained by the DOC in cases that involve highly technical products, and must have access to proprietary information to complete their assignments.

Arrangements for specific proprietary agreements for reporters who will be recording a “closed” portion of a hearing or product experts must be made with the APO office.

Translators who are needed for verification purposes are generally retained by the U.S. Embassy in the relevant country. The analyst is responsible for getting the translator to sign an “Interpreter’s Agreement,” a copy of which is provided as Attachment 1 to this chapter. In addition to the “Interpreters Agreement”, translator must sign a “Certification of Compliance” when the verification is completed. A sample of the “Interpreter’s Certification of Compliance” is provided as Attachment 3 to this chapter.

#### **C. Identifying Parties’ Business Proprietary Information**

The identification in submissions of business proprietary information from multiple persons is covered in 19 CFR 351.306(c). The DOC requires that APO applicants request access to all business proprietary information submitted in a particular segment of a proceeding. In addition, in the case of submissions, such as briefs, that include business proprietary information of different parties, the submission must identify each piece of business proprietary information included and the party to which the information pertains. (For example, Information Item #1 came from Respondent A, Information Item #2 came from Respondent B, etc.) The purpose of this proposal is to enable parties to submit a single APO version of a submission that may be served on all parties represented by authorized applicants instead of forcing parties to submit and serve different APO versions for each of the parties involved in a proceeding. In the case of a submission served on a party not represented by an authorized applicant (a relatively rare event), the submitter must prepare and serve a separate submission containing only that party's business proprietary information. Any business proprietary information that is bracketed in a submission is assumed to be business proprietary information

ACCESS TO INFORMATION

belonging to the party submitting the document unless otherwise identified as business proprietary information of another party.

## ACCESS TO INFORMATION

### **D. Disclosures to Parties Not Authorized to Receive Business Proprietary Information**

19 CFR 351.306(d) clarifies that no person, including an authorized applicant, may disclose the business proprietary information of another party to any other person except another authorized applicant or a DOC official described in 19 CFR 351.306(a)(2). Any person who is not an authorized applicant and who is served with business proprietary information of another party must return that information immediately to the sender without reading it, to the extent possible, and must notify the DOC so that it can investigate the disclosure under 19 CFR 354. The purpose of this requirement is to minimize the damage caused by the unauthorized disclosure of business proprietary information, disclosures that typically are inadvertent.

### **IX. NOTIFICATION OF DESTRUCTION OF BUSINESS PROPRIETARY INFORMATION**

Paragraph (a)(3) of 19 CFR 351.305 requires the destruction of business proprietary information when a party is no longer entitled to it, as well as certification that destruction has been completed. As described above, parties may now retain business proprietary information after the completion of the segment of the proceeding in which the information was submitted. The certification requirements will be triggered at a much later date, which will be at the end of the last segment of the proceeding for which information may be used. Because this will vary from case to case, the specific time at which a party must destroy business proprietary information is described in the APO.

### **X. DOC PROCESSING PROCEDURES**

#### **A. Placement on the APO Service List**

The DOC will grant APO access to qualified applicants by including the name of the applicant on the APO service list. Normally access will be granted within five days of receipt of the application. All applications that are filed in the DOC's Central Record Unit are forwarded to the APO Office for immediate processing. It is possible however, that an application may be attached to other correspondence, such as a letter of

### ACCESS TO INFORMATION

appearance, and might be misdirected and delivered to an analyst in error. Analysts should immediately forward any APO applications that they may receive to the APO office. Analysts should keep track of all APO requests in their cases in order to ensure that the applications are processed in a timely fashion. The APO Office will provide an electronic copy of the APO service list to the analyst as soon as the list is issued or amended.

The APO Office will consult with the analyst assigned to the case to confirm the eligibility of the representative, the party represented, and to obtain additional information concerning other parties to the proceeding and the public service list for the case. Analysts must keep the APO Office informed about any changes to the public service list as the APO Office has no way of knowing this information other than from the analyst. Without accurate information, the APO Office will not be able to inform all parties properly as required about the existence of the APO service list and any amendments to the APO service list as they occur.

#### **B. Claims for “Clear and Compelling Need to Withhold”**

Analysts must also be vigilant to note any argument made by a party concerning an applicant or a clear and compelling need to withhold certain extremely sensitive business proprietary information from APO release. Generally, the claim of a clear and compelling need to withhold information from APO release is made in the cover letter of a submission. The APO office would be unaware of such a claim unless it is brought to their attention. It is the responsibility of the APO office to address all claims concerning a clear and compelling need to withhold business proprietary information from release subject under the DOC's APO. Analysts should never assume that correspondence concerning an APO matter in their case is automatically forwarded to the APO office, and should always insure that a date stamped copy of the correspondence is provided to the APO office as quickly as possible. A member of the APO office will meet with the analyst(s), team attorney, and other team members, if necessary, to discuss the matter.

A decision memorandum is then prepared by the APO office citing the arguments raised by the parties concerning the possible release of the disputed data. The decision memorandum is prepared for approval by the appropriate office director. Concurrence

### ACCESS TO INFORMATION

is obtained from the program manager, team attorney, and APO attorney, as well as from the team of analysts assigned to the case. If we deny the release of information, the requester is informed in writing and is provided with a copy of the decision memorandum. If we determine that the information should be released subject to the APO, the submitter of the information is notified in writing of the determination in accordance with 19 CFR 351.304(d)(1)(iii), and provided with two business days to serve the contested information on the parties subject to the APO. If the party does not serve the information on the parties subject to the APO as directed, the DOC will return the information to the submitter and not consider it further. That information may not be resubmitted and used in the same segment of the proceeding at a later date. The DOC's APO determinations can be immediately challenged before the Court of International Trade (CIT) within two business days of the APO determination. If the DOC determines that there is a clear and compelling need to withhold certain business proprietary information from disclosure under APO, the information is placed on the official file. If the DOC is sued on its final determination/results, the documents containing the "clear and compelling" information are not included in the microfiche record for the CIT. The paper copy of the documents and a separate index are sent to the CIT.

To maintain strict control, all proprietary information being released subject to the APO (except that served directly between parties) must be released through the APO Office. This ensures that the material is properly regulated and is only provided to a party who is authorized to receive the information. **NO INDIVIDUAL ANALYST MAY EVER RELEASE APO MATERIALS DIRECTLY TO A PARTY SUBJECT TO AN APO.**

#### **C. Release of APO Materials**

In order to release business proprietary documents generated by the DOC, analysts must provide the complete proprietary document, or the APO version of the document, along with a copy of the front page and the "APO Cover Sheet" (copy attached at the end of this chapter) to the APO Office. The APO Office will not accept documents for APO release unless an "APO Cover Sheet" is attached. No other preparation is necessary.

### ACCESS TO INFORMATION

Same day releases must be submitted to the APO Office no later than 3:00 p.m., unless previous arrangements have been made for a later release. Failure to provide the required information or to properly mark the case number and the segment of proceeding on the document, or to identify the document as "Business Proprietary - Releasable Under APO" will result in the delay of the release of the information. The APO office will also quickly review the document for bracketing. Improperly marked documents will not be released until the matter is resolved. (NOTE - Only business proprietary information is released under APO. Public information is not released under APO.) As a courtesy, the APO Office will simultaneously provide any public information to a party receiving APO information if the analyst has placed the public information in an envelope labeled "PUBLIC."

All APO releases are given priority treatment. The APO office immediately attends to an APO release. Some releases have a higher priority than others, however, and it is up to the analyst to speak with a member of the APO office if there is a critical deadline or an unusual circumstance that requires instant attention. If a document will not be available for release until the end of the day and it is critical that it be released as soon as it is available, the analyst should provide all of the necessary information to the APO office in advance. The APO office will attend to its APO release work in advance, and will notify parties of the APO pick-up for the end of the day. Similarly, analysts should also notify the APO office of disclosure meetings a day in advance of the disclosure so that the APO office can be prepared and serve the analysts in a more efficient manner.

### **XI. APO SANCTIONS FOR VIOLATIONS OF APOs**

The regulations governing the imposition of sanctions for APO violations are set forth at 19 CFR 354. The regulations articulate a standard for issuance of a warning of an APO violation and address other situations described below. The regulations simplify the procedures for investigating alleged violations and the imposition of sanctions, establish criteria for abbreviating the investigation of an alleged violation, and set a policy for determining when the DOC issues warnings instead of sanctions. The regulations revise the provisions dealing with settlement to make them consistent with practice. The procedures for withdrawing charging letters are also simplified. A sunset provision provides for the rescission of charging letters.

ACCESS TO INFORMATION

ACCESS TO INFORMATION

The DOC vigorously enforces its APOs in order to maintain the integrity of the APO process. It is imperative that we promptly respond to an allegation of an APO violation, and take quick action to protect the information that may have been compromised. If a party reports an apparent APO violation, the analyst must bring it to the immediate attention of the APO office. If we determine that a problem may exist, the document in question must be immediately removed from the public and official files. The APO office will contact the parties involved immediately, and give instruction concerning the retrieval and refileing of the document. Any reference to an alleged APO violation may not appear on the record of the case in which it occurred. Once the matter has been referred to the APO office, and the program manager advised, the analyst may not speak with anyone about the incident. Any questions must be referred to the APO office.

ACCESS TO INFORMATION**XII. APO CHECK LIST**

- o Confirm with the APO office that copies of APO applications have been received.
- o Provide the APO office with copies of all APO related correspondence.
- o Check all submissions including proprietary data for the statement regarding consent to release under APO and immediately notify the APO office if consent is limited or not given.
- o Provide the APO office with copies of all internally generated documents to release to all parties subject to APO. **ALL PARTIES WHO ARE SUBJECT TO APO ARE ENTITLED TO ALL INFORMATION. THE INITIAL APPLICATION IS THE REQUEST FOR ALL INFORMATION - PARTIES ARE NOT REQUIRED TO ASK FOR SPECIFIC INFORMATION AS IT IS GENERATED.**
- o Concur on and return to the APO specialist all APO decision memoranda as soon as possible. Do not pass the APO package to the next person on the concurrence sheet.
- o Keep a copy of the APO service list prominently in you case files.
- o Keep track of all outstanding APO requests and issues in your cases to ensure that they are processed promptly.
- o If you receive any information on a possible APO violation, **IMMEDIATELY** notify the APO office and provide all known details.
- o All business proprietary information subject to APO may be released through the APO office only. This includes decision memoranda, calculations and printouts for disclosure and verification reports. **NO INDIVIDUAL ANALYST MAY**

ACCESS TO INFORMATION

**EVER RELEASE APO MATERIALS DIRECTLY TO A PARTY  
SUBJECT TO APO.**

ACCESS TO INFORMATION

AGREEMENT REGARDING LIMITED DISCLOSURE OF BUSINESS  
PROPRIETARY INFORMATION IN THE ANTIDUMPING/COUNTERVAILING  
DUTY PROCEEDING:

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(Case Name/Case Number/Segment of Proceeding)

I hereby swear (or inform) that I will:

- A. not divulge any business proprietary information obtained in this proceeding, or information created by the Commerce Department which contains business proprietary information, to any person other than:
  - 1. personnel of agencies of the United States Government directly responsible for conducting this proceeding or who are involved in this proceeding;
  - 2. the person from whom the information was obtained;
- B. use such information solely for the purpose of this proceeding by the persons described in paragraphs 1 and 2 above;
- C. not consult with any person other than a person described in paragraph A 1 or 2 of this agreement concerning such business proprietary information without obtaining the approval of the Commerce Department and the party (or the attorney for the party) from whom such business proprietary information was obtained;
- D. take adequate precautions to ensure the security of the business proprietary materials and the information contained therein subject to this agreement;
- E. promptly report any breach of such agreement to the Commerce Department;

ACCESS TO INFORMATION

F. Upon completion of this proceeding, or at such earlier date as may be determined appropriated for particular data, the security of business proprietary information will be protected by the return of all copies of materials released to me pursuant to this agreement and the destruction of all other materials containing the business proprietary information (such as notes or charts based on such information received under this agreement). The return of the proprietary documents will be accompanied by a certificate from me attesting to my personal, good faith efforts to determine that no other copies of such materials have been made available to or retained by any other party to whom disclosure was not specifically authorized by the Commerce Department.

I acknowledge that the breach of the condition delineated in this agreement may subject me to administrative sanctions determined to be appropriate by the Commerce Department.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name - Print/Type)

\_\_\_\_\_  
(Agency/Business Address)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Date)

ACCESS TO INFORMATION

CERTIFICATION REGARDING LIMITED DISCLOSURE OF BUSINESS  
PROPRIETARY INFORMATION IN THE ANTIDUMPING/COUNTERVAILING  
DUTY INVESTIGATION:

\_\_\_\_\_  
\_\_\_\_\_

(Case Name/Case Number/Segment of Proceeding)

Regarding the attached Agreement dated \_\_\_\_\_, I hereby certify that I have abided  
by the terms of the agreement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Name - Print/Type)

\_\_\_\_\_  
(Agency/Business Address)

ACCESS TO INFORMATION

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(Telephone Number)

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(Date)

Revised 11/96